Docket Number: <u>58-0112-0501</u> **Effective Date:** <u>2007 sine die</u> Rules Title: <u>Rules for Administration of Water Pollution Control Loans</u>

Agency Contact and Phone: Bill Jerrel, 373-0400

Public Notice

Negotiated Rule Making: [X] Yes [] No **Groups Involved:** sign-in sheet attached

Descriptive Summary:

Administration of the loan program is currently paid for by a 4% set-aside from the federal capitalization grants that DEQ receives from the U.S. Environmental Protection Agency (EPA). Federal capitalization grants have decreased substantially over the last few years thereby reducing the funding available from the set-aside to administer the loan program. The amount available from the set-aside each year is no longer sufficient to fund DEQ's administrative costs for the year. This creates a dilemma for DEQ because, while the EPA grant funds available for administering the State Revolving Fund (SRF) are diminishing, the amount of funds available for loans is growing due to the increasing dollar amount of loan repayments each year. The work load to issue new loans is increasing as the SRF funds increase.

The purpose of this rulemaking is to revise the Rules for Administration of Water Pollution Control Loans to allow DEQ to collect a fee in the form of a percentage of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on SRF loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Cities, counties, districts and associations that own and operate public wastewater treatment systems may be interested in participating in this rulemaking.

Unless this fee is implemented in FY 2006, DEQ anticipates running out of funds necessary to administer the SRF by the end of FY 2006 and not being able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Idaho Code § 39-3626; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 § U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 § U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program beyond the amount specified in the Clean Water Act. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Idaho Code §§ 39-119 and 39-3627(4).

This rule was adopted as a temporary rule by the Board in November 2005 and is currently effective.

No public comments were received. DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with a final effective date coinciding with the adjournment *sine die* of the First Regular Session of the Fifty-ninth Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.

Hearings: [] Yes [X] No

Written Comment Deadline: 2/1/06

Locations and Dates: N/A

Cost Impact:

Agency: None anticipated.

Regulated Community: The SRF loan program fee is proposed to be a percentage of the loan repayment based on the outstanding balance of the loan. To avoid costs to the regulated community, the loan interest rate is proposed to be lowered by an amount equal to the fee charged. The net outcome to the regulated community is no change in their loan repayment schedule or amount. The result is a slower growth rate in the overall SRF fund. This slower growth rate is being offset by SRF investments made in the State Diversified Bond Fund as administered by the State Treasurer's Office.

Relevant Statutes: Title 39, Chapters 1 and 36, Idaho Code

Idaho Code § 39-107D Statement: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Idaho Code § 67-5221(c) Fiscal Impact Statement:

No negative impact occurs from this rulemaking; provision is not applicable.

Temporary Rule	[] Necessary to protect public health, safety or welfare [] Compliance with deadlines in amendments to governing law or federal programs [] Conferring a benefit
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Section	Existing Rule Summary	Temporary and/or Proposed Rule Summary	Summary of Rule Changes Based on Public Comment	Outstanding Issues
005	Definitions.	Added definition of "Close or Closing."	No comment received. No change.	None.
032	New section.	Loan Fee. Added provision allowing DEQ to collect a fee not to exceed 1% of unpaid loan balance.	No comment received. No change. Prior to adoption of the pending rule, the Board made a minor revision to Subsection 032.03 for clarification purposes, and the temporary rule has been amended accordingly. The amendment to the temporary rule was effective 2/24/06.	None.
050	Loan Offer and Acceptance.	Added reference to new Section 032.	No comment received. No change.	None.